

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

**LAWANDA DAVIS for DEVON T. DAVIS §
a child**

VS. § CIVIL ACTION NO. 5:04cv204

**COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION §**

MEMORANDUM ORDER

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. The Report of the Magistrate Judge which contains her proposed findings of fact and recommendations for the disposition of such action has been presented for consideration. Plaintiff filed objections to the Report and Recommendation. The Court conducted a *de novo* review of the Magistrate Judge's findings and conclusions.

Plaintiff objects to the Magistrate Judge's recommendation that Plaintiff's above-entitled and numbered social security cause of action be affirmed. Specifically, Plaintiff objects to the Magistrate Judge's recommendation, asserting proper weight was not given to Dr. Richter's Pulmonary Residual Functional Capacity Questionnaire dated September 25, 2003 wherein Dr. Richter finds Plaintiff has symptoms of shortness of breath, wheezing, episodic acute asthma, fatigue, coughing, and acute asthma attacks. Plaintiff further asserts if proper weight is given to Dr. Richter's questionnaire, there are at least two marked limitations which necessitate remand of this case for further review.

After reviewing the transcript, the briefs of the parties, and the Report and Recommendation, the Court finds Plaintiff's objections are without merit. The Magistrate Judge considered Dr. Richter's Pulmonary Residual Functional Capacity Questionnaire dated September 25, 2003 on page

6 of the Report and Recommendation. As noted by the Magistrate Judge, the ALJ acknowledged that Devon had severe impairments related to asthma and allergic rhinitis, but the presence of an impairment does not establish disability. According to the Magistrate Judge, the ALJ's decision documents that a full and complete functional equivalence analysis was performed, and the ALJ's determination that Devon did not have any marked or extreme limitations in any domain is supported by substantial evidence. The Court agrees with the Magistrate Judge that the records from treating physician, Dr. Richter, do not establish that there are marked limitations in two domains or an extreme limitation in any one domain.

The Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the Report of the United States Magistrate Judge as the findings and conclusions of this Court. Accordingly, it is hereby

ORDERED that the above-entitled Social Security action is **AFFIRMED**.

SIGNED this 23rd day of February, 2006.

A handwritten signature in black ink, appearing to read "David Folsom", written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE